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Maintaining Your Spiritual Compass in the Practice of Law

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As instructor for eleven years at the Allegheny County Police Training Academy, Mr. Torisky has instructed police cadets in Search and Seizure, the Crimes Codes, Jurisdiction and Procedure and Civil Law. He is currently an adjunct Professor at the Community College of Allegheny County, where he has taught for the past 25 years in a variety of subjects, including Advanced Legal Research and Writing and Criminal Law.

MAINTAINING YOUR SPIRITUALITY IN THE PRACTICE OF LAW

Certain areas of legal practice make it easier to see the true purpose of your life as a Christian. When circumstances lead you to a more materialistic area of practice, it becomes a true test of faith to maintain your spirituality, and rediscover a purpose for your life within and apart from your professional efforts.

I wish to make it clear at the outset that these are my own personal experiences and reflections on the practice of the law, and how my own struggle to maintain my spirituality and sense of purpose as a Christian in this profession often required me to reacquaint myself with the origins of our legal system. I do not mean to imply that someone who has no belief in a Supreme Being cannot be an excellent attorney. These principles, however, apply to me and to my need to see a purpose in my professional endeavors, both as a lawyer and as a Christian with a strong belief in our Heavenly Father.

When I meet someone for the first time and they learn I am a lawyer, the reactions range from surprise, approbation, and occasional disdain. The "approbation" reaction always takes me by surprise, since I don't feel any differently than I did before I became a lawyer; I am the same person. I am no better than anyone else simply because I have an "Esquire" after my name. I don't treat so-called "non-professionals" any differently just because I have a law license. This is because as a Christian I understand the importance of showing humility before God. "Humble yourselves in the sight of the Lord, and he shall lift you up" (James 4:10 [KJV]). "Before destruction the heart of man is haughty, and before honor *is* humility" (Proverbs 18:12 [KJV]).

In many ways becoming an attorney was a perfect fit for me. Throughout my childhood I had always felt a strong sense of right and wrong, which I attributed in large part to my Catholic upbringing. I always became angry when I saw injustice in anything - whether on the playground or in the classroom - when someone was playing by different rules than others in order to get ahead. I am certainly not unique in this regard, but I know that this is something I can identify from an early age as a driving force in my life as I tried to decide what to do with my life.

This sense of justice became more apparent when I became a Resident Assistant in college, a job that required me to enforce the school's alcohol policies and other regulations as part of Residence Life in the dorms. I was also responsible for mediating roommate disputes and counseling students in a variety of issues ranging from alcohol and drug abuse to academic stress and interpersonal relationships. As a Resident Assistant I tried to ensure that those who were being unfairly treated had a voice and were given an opportunity for redress of their grievances.

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In my last year of college, during a meeting with the First Assistant District Attorney for Allegheny County I became inspired to pursue a career in the law. After spending a day with this man and watching various prosecutors at work, I saw firsthand how people could serve as instruments of justice in a dignified and professional manner. These attorneys were applying the laws of society in a deliberate and orderly fashion in a courtroom setting, while affording the accused the right to confront witnesses and examine the evidence presented. I decided then to enroll in law school at Duquesne University. In the fall of my second year of law school, I worked part-time at the District Attorney's Office, and following my graduation I was hired full time as a county prosecutor.

It may seem odd to characterize a prosecutor as an ideal role for a Christian, but for me, this job was a perfect fit. I was able to clearly see the contrast of right and wrong, and in a very real sense I was able to do something about it. This was a tremendously rewarding position, since I derived great satisfaction from prosecuting wrongdoers and helping victims of crime begin the process of healing. It was also very easy to stay on message with my own sense of self-worth; that I was using my legal skills to faithfully and dutifully enforce the laws of society. That was because I clearly understood my role as a prosecutor.

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The job of a criminal defense attorney is to vigorously defend his/her client and, wherever possible, to seek an acquittal. The job of a prosecutor, however, is not simply the reverse, i.e., to seek convictions. Rather, it is to seek justice. "A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence." [Comment following Rule 3.8 of the Pennsylvania Rules of Professional Conduct].¹ The implications of this distinction were considerable. During the investigation of certain

suspected offenses it was often necessary to interview victims in order to assess both their credibility and their capacity to testify. In certain instances these interviews would lead to information that tended to cast doubt on the initial allegations, leading to further investigation and either a dismissal of charges filed, or of a conclusion that the investigation should terminate for lack of prosecutorial merit. Clearly these were judgment calls by all persons involved: the prosecutor and the police/detectives. However, to make the best judgment possible, one needs to rely on a solid religious and moral framework, and endeavor at all times to uphold the rules that we rely upon to exist in an ordered society.

Our Founding Fathers saw the importance and necessity of religion in our form of government, upon which our legal system is based. John Adams, America's second President said, "It is religion and morality, alone, which can establish the principles upon which freedom can securely stand."² George Washington, in his Farewell Address in 1796, stated, "Of all the dispositions and habits, which lead to political prosperity, Religion and Morality are indispensable supports. In vain would that man claim the tribute of Patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the duties of Men and Citizens."³

These were the principles that guided me in my early career. However, after ten years as a prosecutor, my family circumstances required me to seek employment as a civil attorney, when my wife became a full-time mother. This caused me to leave an area of the law that had clearly defined lines of right and wrong, where I felt a real sense of purpose in my life, to one where the primary focus seemed to be about money. I took on a job as an insurance defense attorney, where my clients were not victims of crimes, but were persons or companies alleged to have negligently caused damages and/or injuries to others. This was a very difficult time for me from a spiritual standpoint, since up until this point my role as a prosecutor was a constant reminder of the importance of my life's efforts. It wasn't until I left the District Attorney's Office that I realized how much I had tied my identity to that role, which for me had been a continuous reflection of my self-worth.

Now, however, I was about to embark on a totally different path, where my value as an attorney was not measured by protecting society from criminals and helping victims to cope, but by how much money I could save an insurance company in a civil lawsuit- or least that's how I initially characterized it. By

casting it in these terms, however, I experienced an identity crisis of sorts, since up to this point the focus in my career was never on how much money I could make, or how much money I could save on behalf of a client, but whether I was an instrument for justice.

It was my sister who provided me with much-needed advice, since she had recently experienced a similar drastic change in her profession. Her advice was simple: look upon this not as a permanent change, but merely as an opportunity to learn a different area of law in preparation of another door yet to be opened by God. I took this advice to heart and, recalling the canonical principles that govern my profession, tried to focus on how to achieve the aspirational ethical considerations within a purely materialistic area of law.

The American legal profession is governed by ethical codes, which are derived from religious principles.

The American legal profession is governed by ethical codes, which are derived from religious principles. These ethical precepts are a convenient reminder to the profession of the prevalence of moral considerations in the practice of law. The preamble to the American Bar Association's 1983 Model Code of Professional Responsibility states as follows:

The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and his capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.

Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

In fulfilling his professional responsibilities, a lawyer necessarily assumes various roles that require the performance of many difficult tasks. Not every situation that he may encounter can be foreseen,

but fundamental ethical principles are always present to guide him. Within the framework of these principles, a lawyer must with courage and foresight be able and ready to shape the body of the law to the ever-changing relationships of society.⁴

In an attempt to create a working framework to advance the sentiments set forth in its preamble, the American Bar Association [ABA] drafted a Model Code of Professional Responsibility, comprised of the following: Canons, Ethical Considerations, and Disciplinary Rules. Each of these sections set forth guidelines to help the attorney navigate through existing challenges in the practice of law, as well as to anticipate future conflicts and difficulties. The words contained in the preamble, while inspirational, may seem onerous to some, for they impose an extremely high standard of conduct on attorneys in their professional life. But these standards of conduct have as their basis the moral tenets that are advanced in traditional Christian values. For example, the ABA describes the “Canons” as “statements of *axiomatic norms*, expressing in general terms the standards of professional conduct expected of lawyers in their relationships with the public, with the legal system, and with the legal profession. They embody the general concepts from which the Ethical Consideration and the Disciplinary Rules are derived.” [Emphasis added]⁵

The “Ethical Considerations” are characterized as “aspirational in character and represent the objectives toward which every member of the profession should strive. They constitute a *body of principles* upon which the lawyer can rely for guidance in many specific situations.”[Emphasis added]⁶ The “norms” and “principles” relied upon to fashion an operational framework for the legal profession are rooted in our Judeo-Christian history, which makes it logical to refer to the Bible for guidance in confronting moral challenges as an attorney.

These principles are not limited to an attorney’s professional life. In fact, the preamble to the Pennsylvania Rules of Professional Conduct, which were patterned after the ABA Model Rules, states in part:

Many of a lawyer’s professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, *a lawyer is also guided by personal conscience* and the approbation of

professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's *ideals* of public service.... Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and *moral judgment* guided by the basic principles underlying the Rules. [Emphasis added]⁷

It is against this backdrop that I take the following as my reference points:

Canons of ethics seek to impose a moral standard of behavior in the practice of the law.

1. Canons of ethics seek to impose a moral standard of behavior in the practice of the law.

2. Many of these ethical standards are self-policing, that is, in many cases only you know whether a canon is implicated.

3. Ethical standards necessarily assume the existence of some moral standards against which to measure conduct and to aspire to.

4. Moral standards in turn must necessarily be based on a belief in a supreme deity and of the consequences for behavior that is discordant with the principles established by a belief in a supreme deity. "Know then in your heart that, as a man disciplines his son, the LORD your God disciplines you. So you shall keep the commandments of the LORD your God by walking in his ways and by fearing him" (Deuteronomy 8:5-6 [RSV]). A desire to "not get caught," so as not to be disciplined or punished, is admittedly a motivation for conforming one's behavior. However, while this may explain adherence to the Disciplinary Rules, this does not account for the self-regulating that occurs in the many instances where only you know whether you have done the right thing from an ethical standpoint.

...if an attorney is aware of a written legal opinion that goes against his position in the case, and it is apparent that neither the court nor the opposing attorney is aware of it, he must disclose it to them.

For example, Rule 3.3, "Candor Toward the Tribunal," states in part that "A lawyer shall not knowingly fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel."⁸ This means that if an attorney is aware of a written legal opinion that goes against his position in the case, and it is apparent that neither the court nor the opposing attorney is aware of it, he must disclose it to them. This is obviously a difficult item to monitor, since only the attorney would know that he or she is aware of a case that the other parties are not. This is also fortunately a rare occurrence,

since usually both sides, as well as the court, are familiar with the controlling case law, especially with the advent of electronic research services that enable an attorney to research much more efficiently.

Another example would be Rule 3.1, “Meritorious Claims and Contentions,” which provides that “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.”⁹⁹ This rule is very subjective, and open to a multitude of interpretations, since one attorney’s opinion of legal frivolity may be contrary to the opinion of another attorney, the latter of whom may perceive the issues differently.

As with any self-policing framework, it is only as good as the persons who are doing the policing. As an attorney, my adherence to the canons of ethics is not just a symbolic or mechanical regurgitation of phrases promulgated by our supreme court; it is for me an extension of my life as a Christian and my efforts to demonstrate my faith by upholding these principles at all times.

Although the previously-cited Rules of Professional Conduct applied to prosecutors as well as to civil attorneys, in my new role as a civil litigator I tried to focus on what it was that had given me an identity as a seeker of justice. I was still the same person I was before I left the District Attorney’s Office, just as I was the same person I was before I became a lawyer. What changed was not so much the type of work I was doing, but what it’s focus was on, namely, materialistic issues- valuation of damages, indemnification agreements, insurance policy limits, degrees of negligence and defenses, and so on. This was a stark contrast to criminal prosecution, where the legal “rights and wrongs” were more clearly defined and the consequences readily apparent. However, since the canons of ethics apply to all attorneys, my focus then had to shift to deriving satisfaction from being the most ethical attorney I could be *as a civil attorney*, rather than as a prosecutor.

I tried to associate my continued adherence to the canons of ethics to my faith as a Christian, and make that the focus of my daily efforts.

I tried to associate my continued adherence to the canons of ethics to my faith as a Christian, and make that the focus of my daily efforts. This was much more difficult for me to do, since I didn’t have the positive reinforcement of seeing justice done, or at least the effort towards that goal. However, the excitement of learning new areas of law and applying that learning to new types

of cases enabled me to see that my sister was right, and that God did have a plan for me.

Also, as a civil attorney I have been able to “help” others in ways I never imagined. For example, I soon realized that my skills as a trial attorney transferred very directly to my work as a civil attorney, since trial work in either area requires a knowledge of evidentiary rules as well as the ability to present testimony in court, direct and cross-examine witnesses, make opening and closing statements, and so forth. I soon learned that I was a very capable advocate for persons and entities in this new “area” of the law, and that my ten years as a prosecutor were indeed an asset to me and to my clients. Moreover, in my current practice I find that many of my clients are improperly named as defendants in lawsuits, or that the evidence against them is not sufficient to establish legal responsibility. Thus, I have found that I can still seek “justice” for people, although not in the more dramatic criminal setting I had been accustomed to.

In addition, I have been able to provide *pro bono* services to people who needed legal assistance but could not afford an attorney. I was also able to assist a non-profit organization that advocates for Autistic children, by serving on their board as an advisor. These things I could not have done as a prosecutor, due to my lack of knowledge of civil law at that time.

However, the more financial success that comes from doing your job well can lead to a shift in focus away from your spiritual beginnings and continued growth. Let me be clear here - there is nothing inherently wrong in earning a higher salary, or in acquiring skills that translate into higher forms of compensation. However, as God warned the children of Israel about the dangers of success diminishing their reverence for him: “Beware lest you say in your heart, ‘My power and the might of my hand have gotten me this wealth.’ You shall remember the LORD your God, for it is he who gives you power to get wealth, that he may confirm his covenant that he swore to your fathers, as it is this day” (Deuteronomy 8:17-18 [KJV]). It is easy to lose sight of the reasons for one’s success, and focus on the success itself. For me, I find it helpful to remember that when I leave this earth, I won’t have a single material item that I have acquired. What I hope to have is the knowledge that at all times I endeavored to be the best *person* I could be, not just the best attorney/advocate I could be.

In many ways my combined years of criminal and civil law have made me a much more rounded attorney, since I have had

a wealth of experience in both disciplines. Yet I have found a greater tendency to lose sight of my spiritual development when the primary focus of my cases is on monetary valuations. My success as a prosecutor was measured by my perception that justice was served, or that I had done everything I could to make this so. My success in my current practice is oftentimes whether I have saved my client money, or how much money I was making as a result.

Ethical considerations require me to “zealously assert [my] client’s position under the rules of the adversary system.” [Preamble 2 of the Pennsylvania Rules of Professional Conduct.]¹⁰ The rules of conduct that govern my profession direct that my actions as an advocate be “guided by personal conscience” as well as my own “moral judgment.” This in turn requires a moral framework against which one’s alternative actions can be considered. In my current area of practice I find it requires much more effort to see the spirituality of such endeavors on a regular basis, which makes my life’s work, more than ever, an ongoing struggle of faith.

Endnotes

¹<http://www.padisciplinaryboard.org/attorneys.php>

²John Adams, letter to Zabdiel Adams, 21 June 1776, (Reference: **Our Sacred Honor**, Bennett (371))

³http://avalon.law.yale.edu/18th_century/washing.asp

⁴<http://www.law.cornell.edu/ethics/aba/mcpr/MCPR.HTM>

⁵<http://www.law.cornell.edu/ethics/aba/mcpr/MCPR.HTM>

⁶<http://www.law.cornell.edu/ethics/aba/mcpr/MCPR.HTM>

⁷<http://www.padisciplinaryboard.org/documents/RulesOfProfessionalConduct.pdf>

⁸<http://www.padisciplinaryboard.org/documents/RulesOfProfessionalConduct.pdf>

⁹<http://www.padisciplinaryboard.org/documents/RulesOfProfessionalConduct.pdf>

¹⁰<http://www.padisciplinaryboard.org/documents/RulesOfProfessionalConduct.pdf>